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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,076	01/02/2004	Sidney Schneider	SCHN/0903	1256

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EXAMINER

O CONNOR, CARY E

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/751,076

Applicant(s)

SCHNEIDER

Examiner

Cary E. O'Connor

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 and 16-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the reline material" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "the reline material" in line 13. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Huey (3,727,309). Huey shows a denture comprising a u-shaped tray 28 including outer walls, inner walls, a channel between the inner walls, a flange formed by the meeting of the inner and outer walls, and a tooth receiving portion. A plurality of teeth 10 are located in the tooth receiving portion and the denture also comprises a layer of gum receiving material 50 applied to the inner walls and flange. The gum receiving member is deformable when subjected to a temperature of about 140-150 degrees F, the gum receiving member conforming to the configuration of a gum received within the member column 6, first paragraph).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huey (3,727,309) in view of Cialone (4,521,193). Huey does not teach the use of a biting force to fit the denture. Cialone teaches a method of forming a denture and liner wherein a biting force is applied to the denture to form the denture to the impression of the gum (column 4, lines 11-15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a biting force to form the gum receiving member of Huey, in view of Cialone, in order to provide a more accurate fit of the gum receiving member.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huey (3,727,309) in view of Masuhara et al (4,484,894). Huey does not disclose the thickness of the gum receiving member. Masuhara discloses a denture liner which is between 0.2 to 3.0 mm in thickness to prevent an uncomfortable feeling. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the gum receiving member of Huey with a thickness of between 1 and 5 mm, in view of Masuhara, in order to make the denture more comfortable to the wearer.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huey (3,727,309) in view of Ginsburg et al (5,775,900). The kit of Huey does not

include instructions for use. Ginsburg shows a kit for forming a denture. This kit includes instructions (column 7, lines 47-50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the kit of Huey with a set of instructions, in view of Ginsburg, so that the user can easily determine how to form the denture.

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 703-308-2701. The examiner can normally be reached on M-Th 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 703-308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Application/Control Number:
10/751,076
Art Unit: 3732

Page 5

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cary E. O'Connor
Primary Examiner
Art Unit 3732

ceo
September 18, 2004